

CERE-RP

21 August 1996

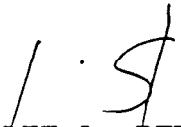
MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Payment of Closing Costs for Private Sale Benefits,  
Homeowners Assistance Program (HAP)

1. A legal opinion has been issued by the Office of Counsel regarding the payment of closing costs to individuals who elect to sell their homes privately but do not receive a cash payment under the private sale option.
2. It is their view that an agency interpretation that HAP closing costs may be paid to eligible homeowners who elect the private sale option, even if a cash payment under a private sale option is not made, meets the reasonableness standard required by the statute. Therefore, the current HAP policy will remain in effect.
3. Enclosed you will find a copy of the legal opinion. If you have any questions, please call Mr. Downey or the undersigned, telephone, 202-761-8984.

FOR THE DIRECTOR

Encl

  
LEE A. BEVINS  
Acting Chief, Policy and  
Operations Branch  
Realty Services Division  
Directorate of Real Estate

DISTRIBUTION:

COMMANDER

NORTH ATLANTIC DIVISION, ATTN: CENAD-RE  
SOUTH ATLANTIC DIVISION, ATTN: CESAD-RE  
SOUTHWESTERN DIVISION, ATTN: CESWD-RE  
SOUTH PACIFIC DIVISION, ATTN: CESPd-RE  
BALTIMORE DISTRICT, ATTN: CENAB-RE

CERE-RP

21 August 1996

SUBJECT: Payment of Closing Costs for Private Sale Benefits,  
Homeowners Assistance Program (HAP)

DISTRIBUTION: (Continued)

COMMANDER

SAVANNAH DISTRICT, ATTN: CESAS-RE

SACRAMENTO DISTRICT, ATTN: CESPCK-RE

FORT WORTH DISTRICT, ATTN: CESWF-RE

21 AUG 1996

MEMORANDUM FOR CHIEF, REALTY SERVICES DIVISION  
DIRECTORATE OF REAL ESTATE (CERE-RP)

SUBJECT: Homeowners Assistance Program, Payment of Closing Costs

1. Reference:

- a. CERE-RP memo for CECC-J, 20 May 96, subject as above.
- b. CECC-J memo for CERE-RP, 17 Jun 96, subject as above.
- c. CERE-RP memo for CECC-J, 2 Jul 96, subject as above.
- d. Meeting CERE-RP (Downey) - CECC-J (Jennings), 25 Jul 96.
- e. CECC-J e-mail for CERE-ZB, 29 Jul 96.
- f. Meeting, CERE-ZB (Fagot) - CECC-J (Jennings), 29 Jul 96.
- g. CERE-ZB e-mail for CECC-J, 1 Aug 96.

2. By reference 1a, you requested our legal views on whether Homeowners Assistance Program (HAP) closing costs may be paid to individuals who elect to sell their homes privately but do not receive a cash payment under the private sale option. In reference 1b, I provided my preliminary conclusion that closing costs could only be provided where an eligible homeowner qualifies for and elects such a cash payment. In that opinion, however, I invited further discussion if you believed that my legal analysis was flawed or I was not aware of critical facts.

3. By reference 1c, you asked that I reconsider the views reflected in reference 1b opinion. I met with Mr. Downey of your staff who provided additional information on the HAP application process, including how an eligible homeowner elects private sale benefits. During that meeting, and based on the additional information, I advised Mr. Downey that it was now my view that the statute could be construed to permit paying the closing costs to eligible homeowners who elect the private sale option (i.e. in the words of the statute, "elects to receive a cash payment as compensation for losses which may be or have been sustained in a private sale"), even if these eligible homeowners do not in fact receive a cash payment, because the sale price of their home exceeds 95 percent of the fair market value prior to the date of the announcement of the intention to close all or part of the installation.

21 AUG 1996

CECC-J (27-1a)

SUBJECT: Homeowners Assistance Program, Payment of Closing Costs

4. Although the construction of the statute described in the previous paragraph obviously is not the only possible interpretation, it does not have to be legally unobjectionable. Interpretations of statutes by agencies charged with administering them are given considerable deference. Chevron v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984). This is especially so where "a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matter subjected to agency regulations". Chevron at p. 844 quoting from Accord Capital Cities Cable Inc. v. Crisp, 467 U.S. 691, 699-700 (1984). As long as the agency makes a reasonable interpretation, it will be upheld. Id. In this context, the "reasonableness" of the agency interpretation is determined by reference to the statute, the legislative history, and the compatibility of the agency's interpretation with the congressional purposes in enacting the provision. Continental Airlines, Inc. v. Department of Transportation, 843 F.2d 1444, 1449 (D.C. Cir. 1988).

5. In my view, an agency interpretation that HAP closing costs may be paid to eligible homeowners who elect the private sale option, even if a cash payment under the private sale option is not made, meets this reasonableness standard. First, the statute provides that closing costs may be paid to an eligible homeowner who "elects to receive a cash payment". It is my understanding that you will pay closing costs only where such homeowners have "elected" the private sale option by selecting the "REIMBURSEMENT FOR LOSS ON PRIVATE SALE" in block 10 on page 4 of DD Form 1607. This clearly appears to satisfy the statutory condition of "elect[ing] to receive a cash payment". 42 U.S.C. 3374(c). In addition, I can find nothing in the legislative history which can be read to conflict with this interpretation. The only committee report language provides that the provision would "authorize the Secretary of the Army, using available funds, to pay a qualified applicant's closing costs under the homeowners assistance program". H.R. REP. No. 103-71, p. 790. (1994); S. REP. No. 103-282, p. 257 (1994). Moreover, the legislative package submitted in support of the proposal which resulted in the amendment which allowed the payment of closing costs clearly indicates that the purpose of the amendment was to avoid Government purchases of property (which are the most expensive alternative) by encouraging eligible homeowners to choose the private sale option. CERE-L memo for OASA(ILE), subject: Proposed HAP Legislation, 27 Aug 93. Construing the statute as not permitting the payment of closing costs where the applicant would be able to sell his or her home for more than 95 percent of the prior fair market available would cause these homeowners to choose the Government purchase option, thus frustrating at least part of the intended purpose. Thus, it is my view that this provision can be construed to allow the payment of closing costs for an eligible homeowner that elects the private sale option, even where a cash payment is not made.


21 AUG 1996

CECC-J (27-1a)

SUBJECT: Homeowners Assistance Program, Payment of Closing Costs

6. Subsequent to my discussion with Mr. Downey, I learned that the Deputy Director had earlier considered various interpretations of the statute. Accordingly, I met with her to discuss my views. Ref. 1e - 1f. By reference 1g, she has advised me that neither she nor the Director have objections to this conclusion.

7. If you have questions concerning this opinion, please call me at 761-8524.

A handwritten signature in black ink, appearing to read 'R. Jennings', with a stylized arrow pointing to the right at the end of the signature.

RUPERT JENNINGS  
Senior Counsel  
for Military Programs

2 July 1996

MEMORANDUM FOR CECC-J

SUBJECT: Homeowners Assistance Program, Payment of Closing Costs

1. Reference your memorandum of 17 June 1996, concerning the subject.
2. The applicants we are talking about have already been considered eligible and have opted for the private sale benefit as required by the statute.
3. These applicants have elected the private sale option, to receive a cash payment, in lieu of government acquisition. Generally, they make this election before knowing what the prior fair market value of their property was, or whether they will actually receive any "...cash payment as compensation for losses which may be or have been sustained..." as a HAP benefit. The question is, do they have to actually receive a cash payment from the government in order to be eligible to have their closing costs paid? Why can't the election of the private sale option be enough to allow the payment of closing costs? It is more beneficial to the applicant and is certainly in the best interests of the government. The payment of closing costs promotes private sales thereby reducing the need for government acquisition and the costs associated; management, maintenance and resale of acquired properties.
4. If an applicant sells his home for 95% of the prior fair market value, he would receive some cash payment as a benefit and therefore be eligible for the payment of his closing costs. Another applicant sells his dwelling for 95.1% of the prior fair market value. He would not get any cash payment as a benefit, additionally, we would not be able to pay any closing costs for this applicant.

FOR THE DIRECTOR:



DON C. CHAPMAN  
Chief, Realty Services Division  
Directorate of Real Estate

ROUTING AND TRANSMITTAL SLIP		Date
		16 Aug 96
TO: (Name, office symbol, room number, building, Agency/Post)		Initials Date
1. CECC-J (Rupert Jennings)		
2.		
3.		
4.		
5.		
Action	File	Note and Return
Approval	For Clearance	Per Conversation
<input checked="" type="checkbox"/> As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

# REMARKS

Rupert:

I think this is what you asked John Downey for.

Kendall

CF:

CERE-R (John Downey)

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
Kendall Taylor	
CERE-L	Phone No.
	761-0515

5041-102

GPO : 1990 O - 276-978

OPTIONAL FORM 41 (Rev. 7-76)  
Prescribed by GSA  
FPMR (41 CFR) 101-11.206

Calendar No. 459

103D CONGRESS  
2d Session

SENATE

REPORT  
103-282

NATIONAL DEFENSE AUTHORIZATION  
ACT FOR FISCAL YEAR 1995

REPORT

(TO ACCOMPANY S. 2182)

ON

AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1995 FOR MILITARY ACTIVITIES OF THE DEPARTMENT OF DEFENSE, FOR MILITARY CONSTRUCTION, AND FOR DEFENSE ACTIVITIES OF THE DEPARTMENT OF ENERGY, TO PRESCRIBE PERSONNEL STRENGTHS FOR SUCH FISCAL YEAR FOR THE ARMED FORCES, AND FOR OTHER PURPOSES

TOGETHER WITH

ADDITIONAL AND MINORITY VIEWS

COMMITTEE ON ARMED SERVICES  
UNITED STATES SENATE



JUNE 14 (legislative day, JUNE 7), 1994.—Ordered to be printed



ch provides access to the Carolina.

llion for construction of chemical agents and munitions projects, \$97.0 million is for Umatilla Army at funding for the two 0.0 million for Pine Bluff Army Depot for phase one. of the funds necessary in the fiscal year 1996

ative technologies to the . The report endorsed a Council to add activated ent systems at the deas concluded after the e not included for this million for utility up-trainage for adaption of systems. The \$18.0 million for Tooele, \$5.0 million for Pine Bluff. is at would amend u. nds for the con- ities to be provided in e funding for other ac- the Army military con- struction of chemi- to a separate DOD ac- ry construction funds, nobligated in separate ate DOD account.

#### *military construction*

that would amend sec- orization Act for Fiscal or the Army National aviation support facil- Marine Corps Reserve e Corps Reserve head-

2601 of the Military ar 1993 to increase the \$1.2 million for repair

#### *Congress of improve-*

at would clarify the no- military family hous-

ing units by requiring Congressional notification for only those family housing improvements exceeding \$50,000 per unit not previously included in the annual budget justification data.

#### *Authority to pay closing costs under the homeowners assistance program*

The committee recommends a provision that would amend section 1013(c) of the Demonstration Cities and Metropolitan Development Act of 1966 to authorize the Secretary of the Army, using available funds, to pay a qualified applicant's closing costs under the homeowners assistance program.

The committee supports the homeowners assistance program and believes that this provision will provide an incentive for private home sales rather than costly government purchases of homes.

#### *Advance planning of community adjustment and economic diversification*

The committee recommends a provision that would prohibit any advance economic redevelopment and reuse planning or other conversion planning conducted by communities in anticipation of the base closure process from being taken into consideration during base closure deliberations.

Some of the communities that depend upon military installations for a significant portion of their economic well-being would like to proceed with reuse planning in advance of any recommendations by the Secretary of Defense or the President to close bases. These communities, although clearly preferring that the bases in their communities remain open, would like to have the opportunity to prepare in advance in the event that a base is recommended for closure. While the communities can undertake this type of planning, there is concern that advance planning might be considered by either the Secretary of Defense or the Base Closure Commission to be adverse to the communities. The provision recommended by the committee would prohibit the Secretary of Defense or the Base Closure Commission from taking into consideration, for any purpose associated with base closure deliberations, any advance planning activities.

The committee urges the Secretary to work actively with the various state and local groups and other organizations interested in base closure activities to assure them that any advance planning activities will not be considered in any base closure deliberations.

#### *Clarifying and technical amendments to base closure laws*

The committee recommends a provision that would amend and clarify several sections of the 1988 and 1991 base realignment and closure (BRAC) acts, title II of Public Law 100-526, and part A of title XXIX of Public Law 101-510. The provision would:

- (1) clarify that the authority of the Secretary of Defense to conduct environmental cleanup would continue after the 1988 BRAC bases are closed at the end of 1995 and that funds in the 1988 BRAC account could continue to be used for cleanup;
- (2) clarify that the Secretary's authority to dispose of personal property at bases closing under both the 1988 and 1991